IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 1504 of 2006
Date of Decision: 26.7.2007

Babu Ram ...Petitioner

Versus

Banarsi Dass and another ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Ashok Khubbar, Advocate, for the appellant.

None for the respondent.

HEMANT GUPTA, J.

Defendant-Babu Ram is in second appeal, aggrieved against the judgment and decree passed by the learned first Appellate Court, whereby the suit for declaration that the parties have entered into private partition in respect of their joint holding, was decreed.

The parties are joint owners of the land measuring 124 kanals 3 marlas. During the partition proceedings before the revenue authorities, the parties entered into a settlement regarding private partition. The said settlement was reduced into writing and the possession was exchanged. Therefore, the plaintiff sought declaration regarding title of the respective shares in terms of the settlement arrived at.

The appellant denied settlement of private partition and alleged the same to be forged and fabricated document. The first Appellate Court, found that no evidence in respect of fraud or misrepresentation of the settlement deed, has been led and that since the parties have entered into private partition, such document does not require registration. It was also

found that the private partition has been given effect to by the parties as the possession was also exchanged.

Learned counsel for the appellant has vehemently argued that the private partition is not permissible as it is the revenue authorities alone, who have been conferred jurisdiction to effect partition of the joint holding. Such aspect has been considered by this Court in **Ajmer Singh v. Dharam Singh, 2006(2) PLR 25**, wherein it has been held that the revenue record by itself neither creates nor extinguishes title. If the co-sharers by mutual consent have entered into separate portions of land and are in enjoyment of their respective portions, then, merely the said private partition has not been formally affirmed in terms of Section 123 of the Punjab Land Revenue Act, 1887, will not relegate the parties to pre-partition status. It was held that affirmation of partition by the revenue officer will only determine the rights of the owners in respect of their obligations to pay land revenue to the State, in terms of the provisions of the Act. In view of the said judgment, in the present case once the deed of private partition is proved to be signed by the parties, the appellant cannot be permitted to ignore such settlement. Such settlement gives details of Khasra Numbers falling to the share of each of the co-owners.

Learned counsel for the appellant then argued that the appellant is not in possession of the portion so assigned to him, in the private partition. If that be so, the appellant may seek possession of the area falling to his share, but he cannot be permitted to avoid the private partition, proved to be executed between the parties.

In view of the above, I do not find any patent illegality or irregularity in findings recorded by the first Appellate Court,

which may give rise to any substantial question of law in the present appeal.

Hence, the present appeal is dismissed.

26-07-2007 (HEMANT GUPTA)
ds JUDGE